

MEMORANDUM OF AGREEMENT
FOR ELECTRONIC COMMERCE PORTAL MANAGER SERVICES

THIS MEMORANDUM OF AGREEMENT between the Information Services Division (ISD) of the Department of Finance of the State of Alabama and Alabama Interactive, Inc., a for-profit Alabama corporation ("INTERACTIVE").

RECITALS:

A. The State of Alabama desires to establish a project, the purpose of which is to provide an electronic commerce portal (the "State Electronic Commerce Portal") for enhanced access to public information and transactions with government for Alabama citizens and others in the most cost-effective, progressive, and cooperative means possible (the "Project"); and

B. In order to effectuate enhanced access throughout the State, ISD issued an Invitation to Bid #01-x-2105627 for the Design and Implementation of a Self-Supporting Web Portal for Digital Government Service dated _____ (hereinafter the ITB), seeking proposals for a private electronic commerce portal manager for the Project; and

C. INTERACTIVE submitted a bid in response to the ITB (the Bid), and such proposal was determined by ISD to be the lowest responsible bid in accordance with section 41-16-20 Alabama Code of 1975; and

D. An Award Letter was issued on ____ creating a contract (the "Contract") between ISD and INTERACTIVE to provide the services called for in the Bid and to receive compensation as provided in the Bid.

E. The parties desire to enter into this Memorandum of Agreement ("Agreement") setting out the details for INTERACTIVE to serve as the electronic commerce portal services manager, to establish, develop, operate, maintain and fulfill the electronic governmental portal service component of the Project for increased electronic access by Alabama residents, businesses, and other state government agencies to public and other useful and relevant information, as well as to transactions with government; and

F. The Electronic commerce portal to be developed by INTERACTIVE is intended to be a significant public access, economic development, governmental efficiency, and educational tool for the State and its residents; and

NOW THEREFORE, in consideration of the mutual promises, terms, and conditions of this Memorandum of Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **PURPOSE OF THIS MEMORANDUM OF AGREEMENT.** The purpose of this Memorandum of Agreement is to establish the basis for the Electronic Commerce Portal between ISD and INTERACTIVE, and for subsequent agreements relating to the Electronic Commerce Portal between INTERACTIVE and other state governmental entities, boards, commissions, departments, agencies, and authorities (hereinafter collectively referred to as "agencies").
2. **PURPOSE OF ELECTRONIC COMMERCE PORTAL.** The purpose of the Electronic Commerce Portal may be summarized as follows:
 - 2.1. To create and provide a significant and diligently promoted public service to Alabama citizens and businesses as resources permit by:
 - 2.1.1. Increasing the accessibility to information and services made available for enhanced access or through electronic means; and
 - 2.1.2. Promoting economic development by increasing the ease of access to government data and other useful information and by promoting the sharing of that information; and
 - 2.1.3. Promoting government efficiency and citizen convenience through electronic government transactions.
 - 2.2. To provide such public service without increasing the tax burden on the citizens of Alabama, through utilization of private capital and management and appropriate payment for the same from revenues generated through Electronic Commerce Portal operations.
3. **LIMITATION OF PURPOSE.** For the purposes of this Memorandum of Agreement, INTERACTIVE shall not engage in any business or businesses of electronic governmental services for the State of Alabama, or provide any other goods or services to Alabama State governmental agencies unless expressly approved by ISD in connection with the Project.
4. **TERM OF MEMORANDUM OF AGREEMENT.**

- 4.1. This term of this Memorandum of Agreement shall be co-extensive with the term of the Contract, being three (3) years, commencing , 2001 and expiring at 12:00 A.M., , 2004, unless earlier terminated pursuant to the provisions herein regarding termination.

5. RELATIONSHIP OF PARTIES.

- 5.1. Except as otherwise expressly provided herein, the parties hereto, in the performance of this Memorandum of Agreement, will be acting in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Except as expressly agreed, no party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of any other party.
- 5.2. INTERACTIVE is solely liable for all labor and expenses in furtherance of its performance hereunder.

5.3 INTERACTIVE may become an agent of the State of Alabama only by the express written authorization of the State. 5.4 ISD shall, within sixty (60) days from the execution of this Agreement (and from time to time thereafter if the persons to be designated should change or if a new designation should be required, as soon as practicable but in any event within thirty (30) days of such request) provide INTERACTIVE with any specific designation or delegation of a specific person or persons by title, authorized to perform functions under the Contract or this Agreement. Examples of such specific persons delegated authority, but not limited to these, include the authority for approval of any Fees (the CIO or express designee) and the authority for approval of Agency Agreements (the CIO or express designee).

6. HARDWARE, SOFTWARE AND ACCESS.

INTERACTIVE will provide hardware, and provide or develop software as enumerated and described in the INTERACTIVE Proposal and the Electronic Commerce Portal Plan (as defined and described in Section 9.8 below), and such other hardware and software necessary to make the Electronic Commerce Portal fully operational in accord with this Memorandum of agreement and all other agreements between either INTERACTIVE and ISD or INTERACTIVE and agencies.

- 6.1. In accordance with this Memorandum of Agreement, upon termination or expiration of this Memorandum of agreement, ISD shall have the option of exercising in connection with all application and Electronic Commerce Portal software, documentation and source code related thereto and utilized in operating the Electronic Commerce Portal (whether originally developed by INTERACTIVE or one of its affiliated subsidiaries of NIC) (collectively

hereinafter "NIC Electronic Commerce Portal Software"), but not software or documentation created by third parties and purchased by INTERACTIVE (hereinafter "Third Party Software"), together with any software updates or upgrades made by INTERACTIVE or one of its affiliated subsidiaries of NIC to NIC Electronic Commerce Portal Software while INTERACTIVE was developing or operating the Electronic Commerce Portal (all such NIC Electronic Commerce Portal software, documentation, source code, object code, and updates, but excluding Third Party Software are hereinafter collectively referred to as the "Software"), one or more of the three choices set forth at section 24.2.2 of this Agreement. In connection with any license to the Software elected thereunder, such license shall only be a license to use the Software only in connection with operation of the State Electronic Commerce Portal, in perpetuity, with rights to modify the source code and to create derivative works therefrom. License rights to Third Party Software used to operate the Electronic Commerce Portal shall be handled in accordance with ISD's choice among the three choices set forth at section 24.2.2, and with respect to any transfer of the same pursuant to such choice, shall be transferred to ISD by INTERACTIVE to the extent permissible under the applicable license terms. Software that is Third Party Software and which is not transferable to ISD shall be identified and described by INTERACTIVE on a list attached as an Exhibit to this Memorandum of agreement or from time to time following utilization of any such new Third Party Software in connection with the Electronic Commerce Portal.

- 6.2. The Software shall be delivered to ISD as required under paragraph 6.2 under such license no later than the last date that the parties operate under the choice made by ISD pursuant to section 24.2.2 or as otherwise agreed to mutually by the parties.
- 6.3. After any transfer of the Software under license as identified in paragraph 6.1, ISD shall have the right to make additional modifications, upgrades, and enhancements to the Software, or to purchase or otherwise acquire such modifications, upgrades, and enhancements, as ISD may see fit for the purposes of maintaining and operating the State Electronic Commerce Portal.
- 6.4. INTERACTIVE will be responsible during the Term of the Contract for keeping, maintaining, and preserving all Electronic Commerce Portal hardware and software and records. Items of hardware or software loaned to any entity by INTERACTIVE will be maintained as agreed between INTERACTIVE and the affected entity.
- 6.5. INTERACTIVE shall deposit on a quarterly basis the source code for the most recent version of all NIC Electronic Commerce Portal Software (excluding Third Party Software) in escrow with a neutral third party to be mutually chosen by INTERACTIVE and ISD (the "Source Code") under the terms of an escrow agreement satisfactory to ISD, INTERACTIVE and the escrow agent. Over the Term of the Contract INTERACTIVE will have the authority to remove superseded Source Code. The Source Code shall be delivered to ISD by the Escrow Agent in the event (i) INTERACTIVE is declared bankrupt or is the subject of any liquidation or insolvency proceeding which is not dismissed within ninety (90) days; or (ii) INTERACTIVE is required to deliver Source Code as provided in paragraph 6.2 above; or (iii) as otherwise provided in the agreement with the Escrow Agent.

INTERACTIVE acknowledges that it will deliver a copy of the software escrow agreement between INTERACTIVE and its Escrow Agent to ISD. INTERACTIVE shall obtain the consent of ISD in writing to any amendments to such agreement, any change in Escrow Agent, or of any replacement or successor escrow arrangements.

The cost of the Source Code escrow shall be borne by INTERACTIVE, and paid out of the Electronic Commerce Portal's revenues as an operating expense. The Information Systems Division agrees that the Source Code shall be treated as the Confidential Information of INTERACTIVE notwithstanding termination or expiration of the Contract.

7. **CONNECTIONS BETWEEN ELECTRONIC COMMERCE PORTAL AND STATE AGENCIES.** Costs associated with, and maintenance of, communication links from state facilities to INTERACTIVE facilities for Electronic Commerce Portal purposes shall be paid as expenses from the Electronic Commerce Portal revenue account. Communication links from state facilities to INTERACTIVE facilities shall be procured under ISD's contracts for communications services except as otherwise agreed by the ISD.
8. **COVENANT AGAINST LIENS OR ENCUMBRANCES.** INTERACTIVE will not pledge or encumber any assets of ISD or of any other agency of the State in its care, custody or control, or cause or permit any lien to attach to same, without the express written permission of ISD.
9. **ELECTRONIC COMMERCE PORTAL AGENCY AGREEMENTS.**
 - 9.1. INTERACTIVE, on behalf of ISD and as directed by ISD, shall use its reasonable best efforts to negotiate with agencies and to obtain their approval through written sub-servicing agreements (hereinafter, "Agency Agreements") to implement electronic access for the public and electronic transactions with agencies. The Information Systems Division shall use its best reasonable efforts to encourage cooperation by agencies with the Electronic Commerce Portal, and shall be a signatory to the Agency Agreements.
 - 9.2. The parties shall cooperate in the preparation, within thirty days from execution of this Agreement, of the form of the Agency Agreement to be negotiated by INTERACTIVE with each agency, and executed between ISD and each agency. The terms of this Memorandum of Agreement, and the documents and exhibits incorporated herein by reference, are intended to be incorporated into any Agency Agreement, and the parties shall use best efforts to cause such incorporation. In the event of a conflict between this Memorandum of Agreement and any Agency Agreement, the terms of this Memorandum of Agreement are intended to be controlling, unless ISD grants an express written waiver allowing the Agency Agreement to deviate from this Memorandum of Agreement.
 - 9.3. All terms and conditions of implementing electronic access through the Electronic Commerce Portal for agencies shall be set forth in such Agency Agreements.

9.4. Each Agency Agreement shall address the following issues, as necessary and appropriate in each case:

9.4.1. Procedures for the handling of any Statutory Fees (as defined below) that the agency is permitted to charge, including whether or not such fees will be collected by the Electronic Commerce Portal Manager (as an agent or otherwise), utilized to pay Electronic Commerce Portal expenses, paid pursuant to Paragraph 9.5 below from the Electronic Commerce Portal Revenue Account (including the time period/cycle and means by which agencies will be paid from the Electronic Commerce Portal Revenue Account, if applicable) and any other terms or conditions relating to said Statutory Fees.

9.4.2. The establishment of any Enhanced Access Fees (as defined below) that will be implemented by the State Electronic Commerce Portal consistent with the terms of this Memorandum of Agreement, and any other terms or conditions relating to said Enhanced Access Fees.

? "Statutory Fees" are those fees, taxes and assessments established by statute, ordinance, resolution, or other law or regulation (excluding Enhanced Access Fees), charged by any agency of the State to obtain a copy of a record, obtain a license or permit, or otherwise to engage in a transaction with an agency, except for the part of such fees, taxes, and assessments, if any, that an agency lawfully agrees to pay INTERACTIVE for access to the State Electronic Commerce Portal.

? "Enhanced Access Fees" include convenience, electronic access, or electronic delivery charges associated with electronic delivery of a record, or electronic filing of a transaction that are established in connection with the State Electronic Commerce Portal or otherwise specifically identified in an Agency Agreement as an Enhanced Access Fee. Enhanced Access Fees also includes any amount that an agency lawfully agrees to pay INTERACTIVE for access to the State Electronic Commerce Portal.

? "Total Fees" equal, for any particular electronic record delivery or electronic transaction filing, any applicable Statutory Fees plus any applicable Enhanced Access Fees.

9.4.3. The criteria which the agency and INTERACTIVE will utilize for system development, testing, and acceptance in order to assure the reliability of the application on the Electronic Commerce Portal.

9.4.4. The procedures and means for protection of data and Electronic Commerce Portal security.

- 9.4.5. A project work plan.
- 9.4.6. A schedule of important dates of events.
- 9.4.7. Specific confidentiality and privacy requirements.
- 9.4.8. The type and content of management and financial reports to be delivered.
- 9.4.9. Training.
- 9.4.10. A marketing plan.
- 9.4.11. Electronic Commerce Portal performance criteria.
- 9.4.12. The agency's rights of termination, and
- 9.4.13. Any other reasonable special requirement to successfully implement and operate electronic access to the agency's data.
- 9.5. Agency Agreements shall provide for the payment of any Statutory Fees to depositories designated by the agencies on a basis agreed between INTERACTIVE and the agency. All Fees shall be deposited into and disbursed from the Electronic Commerce Portal Revenue Account (as defined in, and to be used in accordance with, Paragraph 21 below).
- 9.6. INTERACTIVE shall present the proposed Agency Agreement to ISD for its review. At the same time, INTERACTIVE shall also present to ISD a recommendation for any Enhanced Access Fees to be charged users for the applicable Electronic Commerce Portal service. The INTERACTIVE recommendation shall be submitted for final approval to the Chief Information Officer of the State, which approval shall occur as soon as practicable, but no later than sixty (60) days from submission. The agency shall be responsible for obtaining any and all other approvals as may be required under Alabama law and providing evidence of such approvals to ISD. Approval shall not be unreasonably withheld. As additional services are to be developed for an agency, Letters of Addendum to the Agency Agreement shall be prepared and submitted to ISD for approval.
- 9.7. INTERACTIVE shall execute contracts with Electronic Commerce Portal users desiring monthly or subscription access to records and transactions, provided however that any

special provisions for the payment of Statutory or Enhanced Access Fees are consistent with Alabama laws and regulations and approved by ISD.

9.8 ELECTRONIC COMMERCE PORTAL PLAN

- 9.8.1 Information Services Division has maintained a State website (ALAWEB) for a number of years and is presently enhancing it to provide customer based services in which a visitor to the site can find information without knowing which agency provides the information. ALAWEB does not provide for transactions with State agencies. INTERACTIVE acknowledges the importance of building on the foundation provided by ALAWEB in moving to the next level of e-government by allowing transactions with State agencies. INTERACTIVE and ISD mutually undertake to coordinate their efforts in building a the best possible State Portal, including the Electronic Commerce Portal, that incorporates common look and feel, uniform navigation, and consistent policies.
- 9.8.2 INTERACTIVE has provided a Service Management Plan, attached as Exhibit 1 (the "Plan") for implementation and transition activities for the basic Electronic Commerce Portal services including: a detailed work plan and schedule of activities and deliverables that establish the baseline schedule for completing the Electronic Commerce Portal infrastructure. It is agreed by the parties that such Plan is a good faith estimate with respect to the Project and not a guarantee of performance within the proposed schedule, and further, is subject to such modifications or amendments as the parties may from time to time agree.
- 9.8.3 INTERACTIVE will deliver a proposed updated Service Management Plan (schedule and deliverables) within 30 days of execution of this Agreement and the first Agency Agreement indicating changes (if any) to the Plan. The updated Plan will be submitted to ISD for review and approval. Any changes to the approved updated plan or deliverables must be approved by the Chief Information Officer.
- 9.8.4 In no event will INTERACTIVE be responsible for delays in the Plan due to delays beyond the control of INTERACTIVE, including, by way of example and not limitation, delays by third party providers, or in reaching Agency Agreements with STATE or agencies, which may include changes in the services provided or the order in which the deliverables are performed.
- 9.8.5 INTERACTIVE's performance will be measured against the Plan and subsequent modifications of the Plan.
- 9.8.6 Project status will be reported to ISD each month. INTERACTIVE will closely monitor the schedule and report any anticipated delays to ISD at least 2 weeks prior to the scheduled completion of applications expecting to be delayed and all other task delays as soon as they are suspected regardless of the status of the monthly report.

10. ESTABLISHMENT OF ACCESS FEES.

10.1 The initial access fees shall be determined in accordance with the following table.

Application and Merchant Services

The following table of costs per transaction governs transaction costs and convenience fees for a combination of e-government transactions and merchant services that are web-based including Interactive Voice Response (IVR):

Monthly Transaction Volume	Transaction Cost	Convenience Fee
0 - 1999	\$4.50	\$4.50
2000 - 3999	\$4.00	\$4.00
4000 - 5999	\$4.00	\$4.00
6000 - 7999	\$4.00	\$4.00
8000 +	\$3.50	\$3.50

The following table of costs per transaction governs transaction costs and convenience fees for a combination of e-government transactions and merchant services that are web-based only:

Monthly Transaction Volume	Transaction Cost	Convenience Fee
0 - 1999	\$4.00	\$4.00
2000 - 3999	\$3.50	\$3.50
4000 - 5999	\$3.50	\$3.50
6000 - 7999	\$3.50	\$3.50
8000 +	\$3.00	\$3.00

e-government Application Services Only

The following table of costs per transaction governs transaction costs and convenience fees for e-government applications without merchant services that are web-based including Interactive Voice Response (IVR):

Monthly Transaction Volume	Transaction Cost	Convenience Fee
0 - 1999	\$2.50	\$2.50
2000 - 3999	\$2.00	\$2.00
4000 - 5999	\$2.00	\$2.00
6000 - 7999	\$2.00	\$2.00
8000 +	\$1.50	\$1.50

The following table of costs per transaction governs transaction costs and convenience fees for e-government applications without merchant services that are web-based only:

Monthly Transaction Volume	Transaction Cost	Convenience Fee
0 - 1999	\$2.00	\$2.00
2000 - 3999	\$1.50	\$1.50
4000 - 5999	\$1.50	\$1.50
6000 - 7999	\$1.50	\$1.50
8000 +	\$1.00	\$1.00

e-government Merchant Services Only

The following table must be used to provide per transaction costs and convenience fees based on percentage of the transaction amount for applications that are web-based including Interactive Voice Response (IVR):

Monthly Transaction Amounts	Transaction % Cost	Convenience % Cost
\$0 - 999,999	4.00%	4.00%
\$1,000,000 - \$2,999,999	4.00%	4.00%
\$3,000,000 - \$4,999,999	4.00%	4.00%
\$5,000,000 - \$6,999,999	4.00%	4.00%
\$7,000,000 - \$9,999,999	4.00%	4.00%
\$10,000,000 +	4.00%	4.00%

The following table must be used to provide per transaction costs and convenience fees based on percentage of the transaction amount for applications that are web-based only:

Monthly Transaction Amounts	Transaction % Cost	Convenience % Cost
\$0 - 999,999	4.00%	4.00%
\$1,000,000 - \$2,999,999	4.00%	4.00%
\$3,000,000 - \$4,999,999	4.00%	4.00%
\$5,000,000 - \$6,999,999	4.00%	4.00%
\$7,000,000 - \$9,999,999	4.00%	4.00%
\$10,000,000 +	4.00%	4.00%

e-government Consulting Services

The following table of costs governs consulting services in the event ISD or an agency desires to make use of such services.

Classification	Hourly Rate
WEB Designer	\$105.00
WEB Publisher	\$70.00
Advanced WEB Publisher	\$100.00

WEB Programmer/Analyst	\$100.00
Advanced WEB Programmer/Analyst	\$119.00

For purposes of this section 10, the term "transaction fees" as contained in the Bid means fees paid by or absorbed by the ISD or an agency for access so that the citizen or customer accessing the Electronic Commerce Portal does not incur any charges in excess of Statutory Fees. For purposes of this section 10, the term "convenience fees" means fees paid by citizens or customers for access to the Electronic Commerce Portal so that ISD or the agency receiving payment receives the entire amount of Statutory Fees. Transaction fees and convenience fees are both included in the term "Enhanced Access Fees" as defined in paragraph 9.4 above.

For purposes of this section 10, the number of transactions shall be determined on a statewide basis by adding all transactions in a pricing category, e.g., Application and Merchant Services, for all agencies making use of such services during the month.

- 10.2 After this Memorandum of Agreement has been in effect for one year, INTERACTIVE and ISD may agree on a revised schedule of fees, which shall not exceed the initial fees established in paragraph 10.1.
- 10.3 In establishing revised Access Fees, ISD and INTERACTIVE shall consider the following factors:
 - 10.3.1 The entrepreneurial and start-up nature of the business and attendant risk of capital for INTERACTIVE and the need to earn an acceptable rate of return.
 - 10.3.2 The need to invest in the reasonable expansion of and improvement in Electronic Commerce Portal and information services.
 - 10.3.3 The need of INTERACTIVE to earn a reasonable profit on Electronic Commerce Portal operations during the Contract term, considering in particular any investments or monies advanced by INTERACTIVE in connection with State Electronic Commerce Portal development, expansion, and maintenance.
 - 10.3.4 The market research conducted by INTERACTIVE.

The following additional factors may be considered:

- 10.3.5 A commitment to the public policy requirement to provide electronic access to public records and electronic transactions at the most reasonable rate possible to encourage adoption.
- 10.3.6 That the rates to be charged may be adjusted to permit funding of special projects and enhancement of public service.
- 10.4 Enhanced Access Fees (but not Statutory Fees) may be reduced at the discretion of INTERACTIVE on an interim basis not to exceed ninety (90) days, as an inducement to increase usage of the Electronic Commerce Portal, but any such reduction is subject to review by ISD. In no event, however, shall INTERACTIVE be entitled to reduce any Statutory Fee.
- 10.5 In the event the Statutory Fees are reduced or increased as result of revisions to Alabama law or regulation, such reductions or increases shall be passed on directly to Electronic Commerce Portal users as a decrease or increase in Total Fees.
- 11 ELECTRONIC COMMERCE PORTAL MANAGER REVENUE AND REMUNERATION.
- 11.1.1 The following provisions shall apply to the recognition and disbursement of all funds received by INTERACTIVE as a result of the operation of the Contract, unless otherwise mutually agreed to by the parties hereto in writing:
- 11.1.2 INTERACTIVE shall receive Statutory and Enhanced Access Fees charged for electronic access to records and for transactions through the State Electronic Commerce Portal, and deposit them in an Electronic Commerce Portal revenue account ("Revenue Account") in INTERACTIVE's name, opened in an in-state branch of a nationally chartered bank approved as a state funds depository bank by the State Treasurer.
- 11.1.3 INTERACTIVE shall pay first out of the Revenue Account, to ISD or agencies, as applicable, all Statutory Fees as provided in the respective Agency Agreements.
- 11.1.4 INTERACTIVE shall next pay from the Revenue Account all Electronic Commerce Portal operating expenses.

- 11.1.5 INTERACTIVE will be entitled to retain any sums remaining after payment of the amounts in sections 11.1.1 through 11.1.4 above as its fee.
- 12 DISASTER RECOVERY. INTERACTIVE will establish and maintain a written disaster recovery plan (hereafter, "DRP") acceptable to ISD and will deliver to ISD a copy of the DRP within ninety (90) days of the execution of this Memorandum of Agreement. INTERACTIVE will provide ISD with copies of all substantial modifications to its DRP as they occur.
- 13 CHANGES IN ELECTRONIC COMMERCE PORTAL . INTERACTIVE may not make a planned material change in Electronic Commerce Portal operations without the prior written consent of ISD. A "planned material change" includes, but is not limited to, a change that increases the time required to respond to inquiries, or that adds to the complexity of system use, diminishes services provided to users, or results in a comparable impact on operations noticeable by users, and which is not required to be executed on an immediate or emergency basis. INTERACTIVE will provide to ISD at least thirty (30) days' prior written notice of a planned material change in Electronic Commerce Portal operations.
- 14 NOTICES.
- 14.1 The Chief Information Officer is designated as the person to receive legal notices hereunder on behalf of ISD.
- 14.2 The President of INTERACTIVE is designated by INTERACTIVE as the person to receive legal notices hereunder on behalf of INTERACTIVE at the record address for INTERACTIVE.
- 14.3 Each party may change its designation for notice by written notice to the other party.
- 14.4 Notices by the parties to one another shall be given in writing to the persons identified above or to such other persons as may be subsequently identified in a written notice. Such notices shall be effective on the date of mailing or transmission if sent by U.S. first-class restricted delivery mail, postpaid, return receipt requested, or by any reputable overnight delivery service, prepaid, or by facsimile transmission or electronic mail if proof of transmission is retained. However, notices pertaining to legal matters including, but not necessarily limited to, termination, default or liability, shall be sent in compliance with applicable law and via prepaid, certified mail, return receipt requested.

- 15 CONFIDENTIALITY OF INFORMATION; BOOKS AND RECORDS. The parties hereto acknowledge that ISD and the agencies are subject to the Alabama Access to Public Records Act, § 36-12-40 et seq., Code of Alabama (1975) (the “Public Records Act”), which provides generally that records relating to a public agency’s business are open to public inspection and copying unless exempted under the Public Records Act. Subject to the foregoing, ISD will use its reasonable best efforts to treat information received from INTERACTIVE as confidential and comply with the provisions of this Section 15 where (A) INTERACTIVE specifically advises ISD that it desires such information be kept confidential and (B) such information falls within an exemption under the Public Records Act. The Information Services Division will not be deemed to be in violation of this Memorandum of Agreement if it discloses or makes available to the public any information regarding the State Electronic Commerce Portal as and to the extent such disclosure is required pursuant to or under the Public Records Act.
- 15.1.1.1 For purposes of this paragraph 15, a “trade secret” is defined as information which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by, other persons who can obtain economic value from its disclosure or use.
- 15.1.1.2 For purposes of this paragraph 15, “confidential or proprietary information” shall consist of the following:
- 15.1.1.3 All books, records, documents, and electronic files that pertain to INTERACTIVE’s business or operation or to that of its corporate parent, affiliate, or subsidiary (as contrasted to INTERACTIVE’s operation of the Electronic Commerce Portal) unless the same are disclosed publicly by INTERACTIVE or its corporate parent, affiliate or subsidiary.
- 15.1.1.4 All Electronic Commerce Portal customer and user information that contains separately identifiable personal financial and subscriber information.
- 15.1.1.5 Any and all records maintained by any agency or ISD that are not deemed “public” under the Public Records Act by virtue of falling into one of the exceptions to the definition of public record.
- 15.1.1.6 When INTERACTIVE furnishes or discloses information produced or generated by INTERACTIVE, deemed by INTERACTIVE to be confidential, proprietary or trade secret and such information is furnished or disclosed in a tangible form, it shall clearly mark the information in a manner to indicate that it is considered proprietary, confidential, trade secret or otherwise subject to limited distribution as provided herein. To the fullest extent consistent with and permitted by the Public Records Act, ISD acknowledges that such information constitutes trade secrets and commercial and

financial information of INTERACTIVE which is not a public record and is not subject to public access under the Access to Public Records Act.

- 15.1.1.7 When INTERACTIVE furnishes or discloses information of INTERACTIVE deemed to be confidential, proprietary, or trade secret in an oral or intangible form, it shall, at the time of disclosure, clearly identify the information as being proprietary, confidential or a trade secret, or otherwise subject to limited distribution as provided herein.
- 15.1.1.8 Subject to the requirements of the Public Records Act, the ISD agrees not to disclose or produce for any purpose, including in response to a subpoena or other court or governmental order, without giving INTERACTIVE or its successors, assigns, parents, or subsidiaries as much advance notice as possible, up to ten (10) days, and an opportunity to object to the disclosure or production of any of the confidential, proprietary, or trade secret information of INTERACTIVE or its corporate parent, affiliates, and subsidiaries (collectively referred to herein as the "INTERACTIVE Confidential Information"). At the request of ISD, INTERACTIVE shall provide such reasonable assistance as may be requested by ISD to comply with this provision.
- 15.1.1.9 All other Alabama governmental agencies and personnel shall be subject to the same requirement of confidentiality if INTERACTIVE Confidential Information, marked as confidential, is disclosed to such entity.
- 15.1.1.10 Notwithstanding anything to the contrary herein, ISD may disclose in response to specific requests records pertaining to the operation of the Electronic Commerce Portal that do not contain INTERACTIVE Confidential Information or separately identifiable Electronic Commerce Portal customer or user information.
- 15.1.1.11 INTERACTIVE acknowledges that all confidential information described in 15.1.1.5, for which access is made available to INTERACTIVE by ISD or by any agency, is and remains the confidential property and records of ISD or the agency. INTERACTIVE agrees that it (i) will not disclose such Confidential Information of any agency of the State to any person or entity unless necessary or appropriate to further the objectives of this Memorandum of Agreement or otherwise required by law or court order, and (ii) will not distribute, sell or make any use whatsoever of any Confidential Information other than for the purposes expressly described in this Agreement. If INTERACTIVE makes available or discloses any such State-owned Confidential Information to its corporate parent, affiliates, subsidiaries or any State-approved third-party subcontractor in order to further the objectives of this Memorandum of agreement, it shall (A) give reasonable prior notice to ISD of its intention, and (B) require such party to agree in writing to the confidentiality requirements of this Memorandum of agreement.

- 15.1.1.12 INTERACTIVE shall keep accurate books, records, and documents related to the operation of the Electronic Commerce Portal and shall make such books and records reasonably available to the State, its auditors, or its agents for inspection and review at any reasonable time. Such accessibility and disclosure will not, by itself, cause any such records that constitute INTERACTIVE Confidential Information to lose their protected status hereunder.
- 15.1.1.13 In the event of transition of Electronic Commerce Portal manager operations from INTERACTIVE to another Electronic Commerce Portal manager, INTERACTIVE shall deliver such records as are necessary for Electronic Commerce Portal operations to the new Electronic Commerce Portal manager. Any such transfer and disclosure will not, by itself, cause any such records that constitute INTERACTIVE Confidential Information to lose their protected status hereunder. In the event of any such transition, the INTERACTIVE Confidential Information shall not be disclosed or produced for any purpose, including a subpoena or other court or governmental order, without giving INTERACTIVE or its successors, assigns, parents, or subsidiaries as much advance written notice as possible, up to ten (10) days, and an opportunity to object to the disclosure or production. INTERACTIVE shall be entitled to retain copies of the same.
- 15.1.1.14 Within thirty (30) days after termination or expiration of the Contract and this Memorandum of Agreement, INTERACTIVE shall deliver all non-confidential Electronic Commerce Portal records to ISD, and such records shall become the exclusive property of ISD, if not already owned by ISD. INTERACTIVE shall be entitled to retain copies of the same.
- 16 ALABAMA ELECTRONIC COMMERCE PORTAL PRIVACY POLICY.
INTERACTIVE shall propose, and recommend to ISD for adoption, an Alabama specific Electronic Commerce Portal Privacy Policy for posting on the Electronic Commerce Portal regarding information submitted to or retrieved from the government through the Electronic Commerce Portal. Such recommendation shall be made within four months of the signing of this Agreement.
- 17 FINANCIAL REPORTING AND AUDITS.
- 17.1 INTERACTIVE will provide to ISD monthly income statements, cash flow statements and other reports reasonably requested by ISD for the Electronic Commerce Portal and the Project. INTERACTIVE will also provide quarterly financial statements (unaudited, but presented in accordance with Generally Accepted Accounting Practices ("GAAP")) and annual audited financial statements of INTERACTIVE covering revenues of the Project, demonstrating that INTERACTIVE has maintained positive net worth and such additional capital and liquidity as are reasonably adequate for the operation of the Project. In addition, INTERACTIVE will provide to ISD either (a) a copy of its annual operating audit or (b) a summary of any operating audit findings that affect the Alabama operation.

A competent and reputable CPA licensed in Alabama and approved by the State Board of Accounts or a "Big Five" accounting firm will perform any such audit.

- 17.2 INTERACTIVE also agrees to make changes requested by ISD to comply with recommendations made in any audit, which changes are reasonably agreed to by both ISD and INTERACTIVE.
- 17.3 To the extent the audit report discloses any discrepancies in the INTERACTIVE's charges, billings or financial records, and following a period for review and verification of the amount by INTERACTIVE and ISD, INTERACTIVE will adjust the next regular payment to ISD as soon as reasonably possible, but not to exceed ninety (90) calendar days. INTERACTIVE shall cooperate to assure that verification is completed in a timely manner.
- 17.4 The accounting system shall include a numbered chart of accounts, books of original entry of all transactions, appropriate subsidiary ledgers, a general ledger that includes to-date postings and an audit trail through financial statements. Such books may either be maintained on paper or on computer with appropriate backup. INTERACTIVE shall adopt the calendar year ending December 31 for reporting purposes.
- 18 CONSISTENCY WITH OTHER DOCUMENTS. INTERACTIVE shall conduct all Electronic Commerce Portal operations and development generally in accordance with the terms of this Memorandum of Agreement and the INTERACTIVE Proposal, and in particular in compliance with applicable Agency Agreements and incorporated project plans. As deemed necessary or desirable, INTERACTIVE may depart from such Proposal or agency project plan regarding non-material issues; however, before making any material departure, INTERACTIVE must obtain the approval of ISD and the affected agency in advance. INTERACTIVE shall timely provide to ISD all management, financial and operational and Electronic Commerce Portal reports as ISD may reasonably request or as are provided for in the Agency Agreement to implement the electronic access.
- 19 OVERSIGHT OF THE ELECTRONIC COMMERCE PORTAL.
- 19.1 ISD shall have oversight of the Electronic Commerce Portal. Oversight shall include, but not be limited to:
 - 19.1.1 Establishing Electronic Commerce Portal pricing upon recommendation from INTERACTIVE and the agencies, subject to approval by the Chief Information Officer.

19.1.2 Establishing Electronic Commerce Portal policies, with input from INTERACTIVE.

20 FULL-TIME EQUIVALENT POSITIONS AND SALARIES, BENEFITS AND RELATED EMPLOYER EXPENSES.

20.1 INTERACTIVE agrees to attain a staffing level during the first fiscal year as set out in the Plan and the applicable Agency Agreements. INTERACTIVE's employee salaries and wages for the Project shall be consistent with the requirements of applicable state and federal laws.

20.2 INTERACTIVE shall be solely and exclusively responsible for the hiring, firing, recruitment, management, and training of its employees. ISD shall have no involvement in the personnel affairs of INTERACTIVE beyond the disclosure of the names and positions of officers and employees of INTERACTIVE. INTERACTIVE agrees to undertake such background checks and other procedures reasonably requested by ISD, and to obtain a signed certificate of compliance with paragraph 34 below, if necessary. ISD shall have the right at any time to require that INTERACTIVE remove from interaction with ISD INTERACTIVE personnel from the Project who ISD reasonably believes are detrimental to its working relationship with INTERACTIVE on the Project. ISD shall provide INTERACTIVE with notice of its determination, and the reasons it requests the removal. If ISD signifies that a potential security violation exists with respect to the request, INTERACTIVE shall immediately remove such individual from the Project until it makes its determination as to the validity of the risk; however, INTERACTIVE shall not place the person on the Project again without ISD's consent.

21 DOCUMENTS INCORPORATED BY REFERENCE.

21.1 The entire ITB, as amended, and the INTERACTIVE Bid, which together constitute the Contract, are incorporated into this Memorandum of Agreement by reference and made a part hereof.

21.2 In the event of any conflict between the terms of the Contract and the provisions of this Memorandum of Agreement, the terms of the Contract shall control. It is the intention of the parties that any disputes be resolved pursuant to Paragraph 43 below.

22 INSURANCE AND BONDS.

22.1 INTERACTIVE shall provide ISD written evidence of the following:

- 22.1.1 That INTERACTIVE is an Alabama corporation in good standing, authorized and admitted to do business in the State of Alabama.
- 22.1.2 That INTERACTIVE is covered by a general comprehensive liability insurance policy in the amount of at least (i) \$1,000,000 bodily injury, \$1,000,000 annual aggregate and property damage coverage of \$300,000; \$300,000 annual aggregate; (ii) automobile liability insurance, combined single limit \$1,000,000 each occurrence bodily injury and property damage, owned vehicles; (iii) workers' compensation insurance, coverage B \$100,000. ISD of Alabama shall be listed as an additional insured.
- 22.1.3 Following acceptance of the initial application as described in section 22.3 below, that INTERACTIVE is covered by an Employment Dishonesty Bond covering all INTERACTIVE officers and employees in an amount of at least \$100,000 per employee. ISD shall be listed as obligee.
- 22.2 INTERACTIVE shall maintain all workers' compensation insurance coverage as required by law.
- 22.3 INTERACTIVE shall post and maintain at the initiation of the Contract a performance bond in the amount of \$100,000 until acceptance by ISD of the Department of Nursing License Renewal application required by the ITB, which period is anticipated to be sixty (60) days, to assure the development and delivery of the initial work contemplated by the Plan. Thereafter, INTERACTIVE shall post the Employment Dishonesty Bond described in section 22.1.3 above for the duration of the Contract.
- 23 TERMINATION OF THE CONTRACT.
- 23.1 TERMINATION BY ISD FOR CAUSE. ISD shall have the right to terminate the Contract for cause, subject to cure, by providing written notice of termination to INTERACTIVE. Such notice shall specify the time, the specific provision of the Contract or this Memorandum of Agreement or "for cause" reason that gives rise to the termination, and, if susceptible to cure, shall specify reasonable appropriate action that can be taken by INTERACTIVE to avoid termination of the Contract. ISD shall provide a specified period of time of up to sixty (60) calendar days, unless otherwise specified in this Memorandum of Agreement, for INTERACTIVE to cure breaches and deficiencies of its performance obligations under the Contract.
- 23.1.1 For purposes of paragraph 24.1, the phrase "for cause" shall mean:

- 23.1.1.1 Any material breach or evasion by INTERACTIVE of the terms or conditions of the Contract and its amendments, if any.
- 23.1.1.2 Substantial cessation or material degradation of Electronic Commerce Portal services by INTERACTIVE, or material failure of INTERACTIVE to meet the performance standards set out in the Plan.
- 23.1.1.3 The commission of fraud, misappropriation, embezzlement, malfeasance, significant misfeasance, or similar illegal conduct by INTERACTIVE, its officers, directors or by any corporation or shareholder owning a controlling interest in INTERACTIVE in connection with the Project or which can be expected to have a material adverse effect on the Project.
- 23.1.1.4 Dissolution of INTERACTIVE or any corporation owning a controlling interest in INTERACTIVE or forfeiture of INTERACTIVE's corporate existence or good standing in Alabama without assignment to a successor acceptable to ISD, in its sole discretion.
- 23.1.1.5 Repeal of the State's enabling statute, which shall be cause for immediate termination, unless ISD may undertake oversight or another agency is designated for such oversight within a reasonable time thereafter.
- 23.1.1.6 Amendment of ISD's or an agency's enabling statute or an adverse judicial decision by a court of competent jurisdiction, which has the effect of rendering Electronic Commerce Portal operations no longer feasible.
- 23.1.1.7 The occurrence of any of the following by or with respect to INTERACTIVE or any corporation or entity having a controlling interest in INTERACTIVE (including, at the time of execution, National Information Consortium, Inc. ("NIC")):
 - 23.1.1.7.1 Commencing or permitting a filing against it that is not discharged within ninety days of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against INTERACTIVE in any involuntary case or other proceeding commenced against INTERACTIVE seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to INTERACTIVE or either of their debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against INTERACTIVE seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to INTERACTIVE or either of their debts;

- 23.1.1.7.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of INTERACTIVE or any substantial part of INTERACTIVE's or NIC's assets;
- 23.1.1.7.3 Making an assignment for the benefit of creditors;
- 23.1.1.7.4 Failing, being unable, or admitting in writing the inability generally to pay its debts as they become due or failing to maintain at INTERACTIVE positive net worth and such additional capital and liquidity as is reasonably adequate for the operation of the Project; or
- 23.1.1.7.5 Taking any action to authorize any of the foregoing.
- 23.1.1.8 INTERACTIVE's material breach of an agreement with any agency that is not cured.
- 23.1.1.9 Intentional or negligent act or omission by INTERACTIVE, its parent, affiliates or any agent within the control of INTERACTIVE resulting in the disclosure of any Confidential Information of ISD clearly indicated as being confidential.
- 23.2 TERMINATION BY ISD WITHOUT CAUSE.
 - 23.2.1 ISD may terminate the Contract at any time and without cause if directed to do so by statute.
 - 23.2.2. If required by State law, where the Finance Director makes a written determination that funds, if any, required to sustain the Project are not appropriated or otherwise available to support continuation of the Contract or of an Agency Agreement, the Contract or the Agency Agreement shall be immediately cancelled.
 - 23.2.3. OPTIONS AVAILABLE TO ISD UPON TERMINATION OR EXPIRATION OF THE CONTRACT. Upon termination or expiration of the Contract ISD may elect one of the following options:
 - 1. Contract with INTERACTIVE for a Software license and ongoing support upon mutually agreeable terms and conditions; or
 - 2. Select a new Electronic Commerce Portal manager, and elect to have INTERACTIVE support the Electronic Commerce Portal pursuant to paragraph 25 of this Memorandum of Agreement; or
 - 3. Operate the Electronic Commerce Portal and purchase the equipment, a perpetual Software license and any transferable interests in the third Party Software licenses, for a one-time payment to INTERACTIVE equal to: the product of Four Million

Eight Hundred Thousand Dollars (\$4,800,000.00) multiplied by a fraction, (a) the numerator of which is sixty (60) minus the number of months that have elapsed under the Contract, and (b) the denominator of which is sixty (60).

23.3 TERMINATION BY INTERACTIVE FOR CAUSE. INTERACTIVE shall have the right to terminate the Contract for cause, subject to cure, by providing written notice of termination to ISD. Such notice shall specify the time, the specific provision of the Contract or this Memorandum of Agreement or “for cause” reason that gives rise to the termination, and shall specify reasonable appropriate action that can be taken by ISD to avoid termination of the Contract. INTERACTIVE shall provide a specified period of time of up to sixty (60) calendar days, unless otherwise specified in this Memorandum of Agreement, for ISD to cure breaches and deficiencies of its performance obligations under the Contract or this Memorandum of Agreement. For purposes of paragraph 3, the phrase “for cause” shall mean:

3.1 Any material breach or evasion by ISD or an agency of the terms or conditions of the Contract and its amendments, if any.

23.3.2 The financial base upon which INTERACTIVE relies for solvent Electronic Commerce Portal operations does not materialize within six (6) months of contract signing or is removed thereafter. Any election to waive or postpone termination for cause hereunder by INTERACTIVE at any one time shall not bind INTERACTIVE to waive or postpone termination for cause at any time thereafter.

24. CONTINUITY OF SERVICES.

25.1 INTERACTIVE recognizes that the services under the Contract are very important to the citizens and businesses of ISD of Alabama and must be continued without interruption and that, upon contract expiration, a successor, whether an agency of the State or another private entity, may continue them.

25.2 Prior to the end of the Contract Term, INTERACTIVE covenants to make an orderly transition of the Electronic Commerce Portal and to perform any and all tasks in good faith that are necessary to preserve the integrity of the Electronic Commerce Portal operations. INTERACTIVE shall be entitled to receive the ordinary and usual compensation from the continued operation of the Electronic Commerce Portal during such transition period. If the Electronic Commerce Portal is not profitable to INTERACTIVE at the time of such transition, then INTERACTIVE shall not be required to provide transition cooperation and assistance for longer than three (3) months from the date that such transition begins.

25.2.1 INTERACTIVE shall make every reasonable effort to ensure that any such Electronic Commerce Portal transition shall be performed in a professional and businesslike manner, and shall comply with the reasonable requests and requirements of ISD, agencies, and any

successor Electronic Commerce Portal services manager, to accomplish a successful, seamless, and unhindered transfer of responsibilities.

- 26 **FORCE MAJEURE.** In the event that any party is unable to perform any of its obligations under the Contract or to enjoy any of its benefits because of (or if failure to perform the services is caused by) natural disaster, actions or decrees of governmental bodies, or other event or failure not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately give notice to the other parties and shall use reasonable efforts to resume performance. Upon receipt of such notice, all obligations under the Contract shall be immediately suspended. If the period of nonperformance exceeds sixty (60) calendar days from the receipt of notice of the Force Majeure event, the party whose ability to perform has not been so affected may, by giving written notice, terminate the Contract without incurring any liability, liquidated damages or termination charges whatsoever.
- 27 **STANDARD USE MESSAGES.** If necessary or required by law or if requested by ISD, INTERACTIVE shall cause the Electronic Commerce Portal to display a standard use message upon initial log-on to the Electronic Commerce Portal, and each Electronic Commerce Portal user shall be required to verify compliance with said message terms. Upon subsequent log-ons, such message may be displayed only, without verification, if prior verification is logged in the user’s file. Messages shall state in understandable and clear terms what, if any restriction(s) exist with regard to accessing the information or conducting the transaction, and that the individual accessing the information or conducting the transaction must accept any and all such restriction(s) before proceeding with the authorized access or transaction. Moreover, in addition to any overall messages, the Electronic Commerce Portal shall include any language or restriction required by Alabama or Federal law for information from a particular AGENCY. The standard use message shall be updated to comply with any amendments to applicable law.
- 28 **AGENCY ACCESS.**
- 28.1 Consistent with State policies, all agencies shall have terminal (read) access to the computerized log of Electronic Commerce Portal users accessing for-fee agency data and their security status, without access cost to the agency or other agencies or ISD. The agency will be responsible for the cost of terminal(s) and the cost of a dial-up or lease line, whichever is used.
- 28.2 An agency must be able to sign on to INTERACTIVE’s system to audit enhanced access to its for-fee records. On-line audit capability must be available for the length of time specified by the agency after transaction processing. After the on-line retention period has expired, INTERACTIVE shall, as specified between INTERACTIVE and the agency, retain, destroy, or provide the Electronic Commerce Portal user log information to the agency without cost. Insofar as these records may be public, INTERACTIVE shall act as directed by the agency in compliance with the Alabama law on retention or access of public records.

28.3 At a minimum, the Electronic Commerce Portal shall retain the following data: name of Electronic Commerce Portal for-fee user, transaction data and time, type of inquiry and access keys.

28.4 INTERACTIVE shall notify affected agencies and the Chief Information Officer of ISD of any unauthorized attempt to bypass Electronic Commerce Portal security within two (2) hours of detection of such attempt. The notice shall contain detailed information to aid ISD or any affected agency in examining the matter.

29 PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INDEMNITY.

29.1 INTERACTIVE shall indemnify, defend and hold harmless ISD against any claim that any part of the Software, programming or operation provided by or to be provided by INTERACTIVE, excepting commercial off-the-shelf Third Party Software, infringes a U.S. patent, or a U.S. or international copyright, trade secret or trademark of any person or entity, and INTERACTIVE shall be solely responsible for any resulting costs, damages, and attorney's fees finally awarded.

29.2 ISD shall be provided with prompt notice of any claim of infringement of a U.S. patent, or a U.S. or international copyright, trade secret or trademark, and INTERACTIVE shall have the exclusive right to defend or settle such claim at INTERACTIVE's option except that ISD shall have the right to participate in the defense and selection of defense counsel when issues of State law or policy are involved. ISD shall cooperate with INTERACTIVE in its defense or settlement of such claim at no expense to ISD.

29.3 If INTERACTIVE determines that, as a result of such claim the right of users to use the Electronic Commerce Portal is likely to be abridged, INTERACTIVE shall (a) take all reasonable steps necessary to procure for ISD the right to continue to use programming or operation; or (b) modify the Electronic Commerce Portal (provided such modification will accomplish resumption of substantially all Electronic Commerce Portal operations) so that no such abridgment will occur and correspondingly reduce charges if the modified Electronic Commerce Portal is not substantially comparable to what it was before the modification. If (a) and (b) fail, then INTERACTIVE may discontinue such service without liability except where INTERACTIVE acted with gross negligence, willful misconduct or bad faith with respect to infringement and damages to ISD resulted. If resumption of substantially all Electronic Commerce Portal operations cannot be accomplished, ISD may terminate the Contract for cause pursuant to Paragraph 24.1.

30 LIABILITY.

30.1 The State of Alabama, its agents and employees shall not be legally responsible to INTERACTIVE for errors due to Electronic Commerce Portal problems caused by INTERACTIVE.

30.2 INTERACTIVE agrees for itself, its agents, employees and assigns to indemnify, defend and hold harmless ISD, its agents and employees from any and all loss, damage or liability caused in whole or in part by INTERACTIVE's intentional acts, negligent acts or omissions, material failure to perform under the terms of the Contract, or violation of applicable laws, rules, regulations, or ordinances, except to the extent that the same was caused or induced by ISD or any agency.

30.3 INTERACTIVE agrees that it has no right of subrogation or contribution from the State of Alabama for any judgment rendered against INTERACTIVE or any claim settled by INTERACTIVE.

30.4 ISD warrants through its representative's signature hereto that it has the legal authority to enter into this Memorandum of Agreement with INTERACTIVE.

31 ASSIGNMENT AND SUBCONTRACTING.

31.1 INTERACTIVE may not assign any of its rights or delegate any of its duties hereunder unless done pursuant to express and prior written consent of ISD.

31.2 INTERACTIVE may subcontract portions of work to be performed by it under the Contract with the express and prior written consent of ISD. ISD acknowledges and consents to the use of subcontracted services of affiliated NIC entities to assist in the performance of INTERACTIVE's duties hereunder, provided the fees for such services shall be reasonable and comparable to fees that would be paid to unaffiliated third parties for similar services and further provided that any State-approved subcontractors acknowledge and agree in writing to perform such services consistent with any applicable terms of this Memorandum of Agreement, including without limitation those provisions relating to State ownership and confidentiality of State records.

31.3 INTERACTIVE shall be fully responsible for all performance activities, compliance with the Contract, with user agreements and with all Agency Agreements and compliance with all federal, state, and local laws, including, but not limited to, any equal employment opportunity and affirmative action statutes and regulations, if applicable, for all subcontractors, if used.

32 COMPLIANCE WITH LAWS. INTERACTIVE agrees to comply with all applicable federal, state and local laws, rules, regulations, or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the

promulgation of regulations thereunder after execution of the Contract shall be reviewed by the Alabama Department of Finance and INTERACTIVE to determine whether the Contract requires a formal amendment.

33 NONDISCRIMINATION. INTERACTIVE and its subcontractors, if any, shall comply with the requirements of state and federal laws regarding nondiscrimination. Breach of this covenant may be regarded as a material breach of contract.

34 CONFLICT OF INTEREST.

34.1 As used in this paragraph 34:

34.1.1 "Immediate family" means the spouse and the unemancipated children of an individual.

34.1.2 "Interested party" means:

34.1.2.1 The individual executing this Memorandum of Agreement;

34.1.2.2 An individual who has an interest of three percent (3%) or more of INTERACTIVE or INTERACTIVE's parent corporation; or

34.1.2.3 Any member of the immediate family of an individual specified under subparagraph 34.1.2.1 or 34.1.2.2. ISD may cancel the Contract without recourse by INTERACTIVE if any interested party is or becomes an employee of ISD of Alabama.

34.2 ISD will not exercise its right of cancellation under subparagraph 34.2 above if INTERACTIVE obtains and furnishes to ISD an opinion by State Ethics Commission indicating that the existence of the Contract and the employment by the State of Alabama of the interested party does not violate any statute or code relating to ethical conduct of state employees. ISD may take action, including cancellation of the Contract, consistent with an opinion of the State Ethics Commission obtained under this subparagraph 34.3.

34.3 INTERACTIVE has an affirmative obligation under this Memorandum of Agreement to disclose to ISD (pursuant to Paragraph 14 above) when an interested party is or becomes an employee of the State of Alabama.

34.4 The obligation under this paragraph 34 extends only to those facts that INTERACTIVE knows or reasonably could know.

- 35 SEVERABILITY. Should any provision of this Memorandum of Agreement be found invalid, ineffective or unenforceable under present or future law, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 36 TAXES. ISD and other State agencies are exempt from all federal, state, and local taxes. ISD will not be responsible for any taxes levied on INTERACTIVE in performing under the Contract.
- 37 NO WAIVER OF BREACH. No waiver of a breach of any provision of the Contract shall constitute a waiver of any other breach, or of such provision. Failure of ISD or INTERACTIVE to enforce, at any time, any provision of the Contract shall not be construed as a waiver thereof.
- 38 MAINTAINING A DRUG FREE-WORKPLACE
- 38.1 INTERACTIVE hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. INTERACTIVE will give written notice to ISD within ten (10) days after receiving actual notice that an employee has been convicted of a criminal drug violation occurring in INTERACTIVE's or subcontractor's workplace.
- 38.2 False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the Contract, debarment of contracting opportunities with ISD of Alabama for up to three (3) years, or any or all of the foregoing.
- 38.3 In addition to the provisions of the above paragraphs, if the total contract amount set forth in the Contract is in excess of \$25,000.00, INTERACTIVE hereby further agrees that the Contract is expressly subject to the terms, conditions and representations of the following certification:
- 38.3.1 The INTERACTIVE certifies and agrees that it will provide a drug-free workplace by:
- 38.3.1.1 Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in INTERACTIVE's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- 38.3.1.2 Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) INTERACTIVE's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.

38.3.1.3 Notifying all employees in the statement required by subparagraph 38.3.1.1 above that as a condition of continued employment the employee will (1) abide by the terms of statement; and (2) notify INTERACTIVE of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

38.3.1.4 Notifying in writing ISD within ten (10) days after receiving notice from an employee under subparagraph 38.3.1.3(2) above, or otherwise receiving actual notice of such conviction;

38.3.1.5 Within thirty (30) days after receiving notice under subparagraph 38.3.1.3(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

38.3.1.6 Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 38.3.1.1 through 38.3.1.5 above.

39 NON-COLLUSION AFFIDAVIT. The undersigned attests subject to the penalties for perjury that he or she is the contracting party, or that he or she is the representative, agent, member or officer of the contracting party, that he or she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, to the best of his or her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he or she has not received or paid, any sum of money or other consideration for the execution of the Contract other than that which appears upon the face of the agreement.

40 PENALTIES/INTEREST/ATTORNEY'S FEES. Each party will in good faith perform its required obligations hereunder and, does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Alabama law.

41 WARRANTIES.

41.1 INTERACTIVE warrants, represents and assures that during the entire term of the Contract, and any renewal period, that the Electronic Commerce Portal, and INTERACTIVE's related management services thereof, shall generally comply with the requirements set forth in the ITB as well as the responses provided in INTERACTIVE's Bid and the requirements and performance standards mutually agreed to in writing in the individual Agency Agreements, subject to the oversight of ISD.

41.2 INTERACTIVE further warrants, represents and assures that it will perform all of its management services to ISD for the Electronic Commerce Portal at all times in a diligent, competent, and workmanlike manner, in accordance with applicable laws and regulations and in a timely fashion consistent with its reasonable schedules and work plans.

42 GOVERNING LAW. This Memorandum of Agreement shall be construed in accordance with and governed by the laws of the State of Alabama, and suit, if any, must be brought in the State of Alabama.

43 DISPUTE RESOLUTION.

43.1 It is the intent of the parties that any disputes that may arise between them be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' duly authorized representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties hereto agree to resolve such disputes in accordance with the provisions of this paragraph 43.

43.2 Any disputed issues concerning the Contract or this Memorandum of Agreement shall in all instances be initially referred to the parties' designated representatives identified in paragraph 14 hereof. The parties' designated representatives shall use reasonable best efforts to render a mutually agreeable resolution of the disputed issue, in writing, within seventy-two (72) hours of such referral.

43.3 INTERACTIVE shall continue to perform pursuant to the Contract and this Memorandum of Agreement during any dispute resolution proceedings, subject to the provisions of the Contract and this Memorandum of Agreement.

44 COUNTERPARTS. This Memorandum of Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

45 ENTIRE AGREEMENT. The Contract and this Memorandum of Agreement contain the sole and entire agreement between the parties, and supersedes any and all other agreements between them. The parties acknowledge and agree that none of them has made any representation with respect to the subject matter of the Contract or this Memorandum of Agreement or any representations inducing the execution and delivery hereof except such representations as are specifically set forth herein, and each party acknowledges that it has relied on its own judgment in entering into the Contract. The parties further acknowledge that any statements or representations that may have heretofore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with her or its dealings with the other.

SURVIVAL. The following provisions of this Memorandum of Agreement shall survive the termination or conclusion of the Contract: Paragraphs 15, 24.2.3, 25, and 43.

IN WITNESS WHEREOF, the parties having read and understood the foregoing sections of the Contract including all documents and exhibits incorporated therein by reference, expressly agree to these terms and conditions as evidenced by their respective dated signatures below:

The remainder of this page is left blank intentionally.

ALABAMA INTERACTIVE, INC.

Signature Date

Printed

Title

ATTEST

Date

STATE OF ALABAMA)
) ss.
COUNTY OF _____)

_____, of lawful age, being first duly sworn, deposes and says that s/he is
President of Alabama Interactive, Inc. and has been duly authorized to execute this Memorandum of
Agreement on its behalf.

SUBSCRIBED AND SWORN before me this _____ day of _____, _____.

Notary Public
My Commission expires: _____

DEPARTMENT OF FINANCE, INFORMATION SERVICES DIVISION:

By: _____
Chief Information Officer

Date: _____

ACCEPTED AND AGREED:

DEPARTMENT OF FINANCE, DIVISION OF PURCHASING:

By: _____

Date: _____

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